

Constitution provides for the promotion of "...the Progress of Science and Useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries...", art. I, §8. The Supreme Court identified three categories of unpatentable subject matter: laws of nature, natural phenomenon, and abstract ideas. See, Diamond v. Diehr, 450 U.S. 175, 185. Applicant contends that the claims, as now written, describe useful arts and do not fall under any of the three recognized unpatentable categories and therefore the rejection under §101 should be withdrawn. A fourth category of unpatentable subject matter - "nontechnical subject matter" - has not been established.

Examiner has rejected claims 1-16 under 35 U.S.C. § 103 (a) as being unpatentable over USP 5,937,392 to Alberts ("Alberts") in view of USP 6,047,327 to Tso et al. ("Tso"). Alberts discloses a system and method for banner advertising on a large network such as the Internet, with control of the number and frequency of "hits" - thereby providing advantages to the advertiser. Examiner believes the disclosure of Alberts implicitly shows all of the elements and limitations of claim 1. Tso discloses an information distribution system that sends information (or a pointer such as a URL) directly to a user. What information is sent is dependent upon factors such as the location of the user, the time of day, and user profile information. See col. 1, lines 44-52.

Upon considering the elements of claim 1, one finds that the "accepting a subscriber advertising profile" is not taught or suggested by Alberts. Alberts suggests that classifications of groups of subscribers (i.e., children vs. adults, home site access vs. work site access) may be used to concentrate or intensify ads to these groups, but Alberts does not suggest a profile for an individual subscriber (as individualization provides just the opposite of concentration). See col. 1, lines 44-48. One fundamental difference between the purposes of Applicant's invention and Alberts' invention is that Alberts is directed to optimizing banner advertising for the advertiser while Applicant's invention is directed to optimizing advertising for the subscriber. See the application page 5, line 11; page 6, line 2; page 6, line 6; page 6, line 14; and page 7, line 8. Compare to Alberts' statement: "It would be desirable for a web site administrator that sells ads based on a number of hits per day to have an efficient way to cause the appropriate number of ads to be served and to be able to adapt to different situations in a flexible manner." Col. 1,

lines 49-52. Thus, inferences that can be drawn by one of ordinary skill must respect the objective of the invention, not open to speculation - particularly speculation derived from Applicant's teachings.

The next element of claim 1, "storing...", as well as the "recalling..." element, will be explored below. Applicant's "determining an attribute of and a time significance for an advertisement" and "comparing said subscriber advertising preference to said attribute" is not suggested by Alberts. Alberts discloses information that is associated with advertisements is kept in a table (30) in the advertiser's database (20) and includes an ad identifier (34) and triggering information (42). The ad identifier is a URL or a pointer to a graphical or textural object. See col. 3, lines 37-41. The triggering information is defined as the region from which the user has accessed Alberts' system or the content which the user has currently accessed. See col. 7, lines 11-21. Note that while an attribute of the advertising, for example a region in which a business exists, may be implicitly disclosed by Alberts and recognized by one of ordinary skill, it is too long a stretch of the imagination to find an implicit comparison of this to a subscriber-stored profile, which Alberts does not suggest. Alberts discloses a comparison being made to parameters of the immediate access by the user (location and/or content accessed during the immediate session). Additionally, Alberts does not include a time significance that is compared to a current time of the subscriber. Alberts teaches that ad frequency, ad intensity at times during the day, a start date, and a stop date or run length can be made part of the ad information table (30). See col. 3, lines 41-46 and col. 2, lines 30-34. It is noteworthy that any advertising time concerns are not related to the user, rather they are related to the advertising and support Alberts' objective stated at col. 1, lines 49-52.

There is no determining of a current time of the subscriber by Alberts, thus there can be no "comparing said current time to said time significance" as required in claim 1. The regionality described by Alberts at col. 7, lines 11-14 is directed to business location in a region defined by the advertisements. While Alberts includes a banner advertisement with content, it is not done with the subscriber time and profile matches described above.

Examiner has acknowledged that the element "storing said subscriber advertising profile at the server..." is not disclosed by Alberts but believes Applicant's required step is implicit in the Alberts disclosure. Applicant has been specifically directed to col. 1,

lines 55-65 and col. 4, lines 10-26. Alberts explicitly identifies components of the advertising system: an advertising server, an advertising database, and an advertising controller. The database is clearly defined as only for "stor[ing] information about the ads". Col. 1, lines 61-62. Specifically, there is information storage for statistics for accurate control of the serving of ads (col. 4, lines 6-10), reports for a system manager (col. 4, lines 12-14), and verification to advertisers that ads were actually displayed (col. 4, lines 21-23). Alberts has made it clear that the invention is for the efficiency of the web site administrator (col. 1, lines 49-52), not for the convenience of the user. This is borne out in Alberts' summary where it is stated that Alberts' invention "...provides an integrated system that allows ads to be served in a highly flexible and accurate manner a desired number of times throughout the day and evenly distributed during the day, or intensified at times if desired." Col. 2, lines 30-34. This system accommodation of the needs of the advertiser does not suggest, or motivate one of ordinary skill to experiment to incorporate, a subscriber preference storage. Additionally, the serving of ads based on immediate events (such as the location or content accessed, summarized at col. 2, lines 30-40) does not provide motivation to explore a subscriber preference storage. Given the intent of Alberts, there is no implication or suggestion that there should be a storage mechanism for a subscriber's preferences and it is only after learning of Applicant's invention that such an implication can be drawn.

Examiner cites Alberts as disclosing the targeting of users during particular times, at col. 2, lines 15-25. This is not the same and lacks the individuality of a single user as claimed, in that Alberts does not disclose a determination of the current time of the subscriber and comparing this time against the time significance of the advertisement.

The present office action rejection under §103 introduces Tso, to be considered in combination with Alberts. Tso discloses a method and apparatus for automatically distributing electronic information to a targeted group of users, preferably communicating with the users over a cellular communications network. See col. 2, lines 40-66. Information destined for the user is filtered based upon the time of day, the location of the user, and user profile criteria. Col. 13, lines 27-34. The user profile is constructed from user responses to a questionnaire, which determine such parameters as age, income, job, residence, and similar user demographics. Col. 21, lines 32-51.

Information that meets the time of day and location of user is sent as an SMS (Short Message Service) message over the cellular network. Col. 14, lines 15-21.

Applicant has amended claims 1 and 9 to further clarify the present invention. Specifically, the elements of storing a subscriber-specified time-of-delivery preference and the delivery of the content and included advertisement upon the match of current time and time of delivery preference are included from dependent claims. Although Tso includes a user preferences capability, such preferences are of a personal nature, used to cull content and/or advertising, and suggest nothing for system control such as a preferred delivery time. Alberts offers no teaching on the subject.

Examiner believes Alberts implicitly shows all of the elements and limitations of claims 2-8 and 10-16 but lacks explicit recitation of some of the elements and limitations of these claims. Examiner has taken "Official Notice" that both the concepts and advantages of all of the elements and limitations of claims 2-8 and 10-16 were well known and expected in the art. Applicant traversed the assertion in earlier responses and continues to do so now.

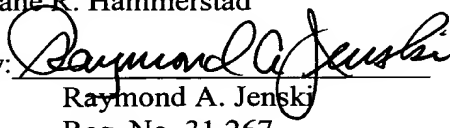
In summary, neither Alberts nor Tso, taken alone or in combination, teach or suggest the invention as now claimed. Accordingly, a rejection of the claims under 35 U.S.C. §103 is not proper. Therefore, in view of the foregoing Amendment, Applicant believes the present Application to be in a condition suitable for allowance. Examiner is respectfully urged to withdraw the rejections and pass the present Application to allowance.

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**ATTACHMENT 1**

1. (Currently Amended) A method of delivering content and time significant advertising from a server to a subscriber comprising the steps of:

accepting a subscriber profile including an advertising preference and a time of delivery preference profile;

storing said subscriber ~~advertising~~ profile at the server;

determining an attribute of and a time significance for an advertisement;

recalling at the server said stored subscriber advertising preference profile;

comparing said subscriber advertising preference profile to said attribute;

determining a current time of the subscriber;

comparing said current time to said time significance; ~~and~~

including said advertisement with the content at the server when said current time matches said time significance and said subscriber advertising profile matches said attribute ; and

delivering the content and said included advertisement from the server to the subscriber when said current time determination matches said time of delivery preference.

2. (Original) A method in accordance with the method of claim 1 wherein said determining a current time further comprises the steps of:

recalling a postal code associated with the subscriber; and

mapping a local time zone correction established by said postal code to a time standard.

3. (Original) A method in accordance with the method of claim 1 wherein said determining an attribute further comprises the step of recalling at least one previously stored attribute associated with said advertisement.

4. (Original) A method in accordance with the method of claim 1 wherein said determining a time significance further comprises the step of recalling a previously stored

time period associated with said advertisement and having time relevance to said advertisement.

5. (Original) A method in accordance with the method of claim 4 wherein said comparing said current time to said time significance further comprises the step of determining whether said current time is within said time period, thereby matching said time significance.

6. (Currently Amended) A method in accordance with the method of claim 1 further comprising the step of delivering the content and said included advertisement from the server to the user in accordance with a request of the subscriber.

7. (Cancelled)

8. (Cancelled)

9. (Currently Amended) A service provider server that delivers content and time significant advertising to a subscriber from a network, comprising:

a memory that stores a subscriber profile including an advertising preference and a time of delivery preference ~~profile~~ provided by the subscriber;

at least one network interface that accesses the network to obtain an advertisement, an attribute of said advertisement, and a time significance for said advertisement;

a clock at the server that generates a current time associated with the subscriber;  
and

a processor coupled to said memory, said at least one network interface, and said clock and adapted to compare said subscriber advertising preference ~~profile~~ to said attribute, to compare said current time to said time significance, ~~and~~ to include said advertisement with the content when said current time matches said time significance and when said subscriber advertising preference ~~profile~~ matches said attribute, and to request

delivery of the content and said advertisement from the server to the subscriber when said current time determination matches said time of delivery preference.

10. (Original) A service provider server in accordance with claim 9 further comprising a postal code stored in said memory and associated with the subscriber, and wherein said clock is adapted to map a local time zone correction established by said postal code to a time standard to generate said current time.

11. (Original) A service provider server in accordance with claim 9 wherein said time significance further comprises a time period associated with said advertisement and having time relevance to said advertisement.

12. (Original) A service provider server in accordance with claim 11 wherein said processor is further adapted to compare said current time to said time period to determine whether said current time is within said time period, thereby matching said time significance.

13. (Original) A service provider server in accordance with claim 9 wherein said processor is further adapted to deliver the content and said included advertisement to the user via a one of said at least one network interface in accordance with a delivery request of the subscriber.

14. (Cancelled)

15. (Cancelled)

16. (Cancelled)